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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

OREGON NATURAL DESERT ASS’N

Plaintiff,

v.

BUREAU OF LAND MANAGEMENT,
DANA SHUFORD, Burns District Manager,
BLM, and **JOAN SUTHER**, Field Manager,
Andrews Resource Area, BLM,

Defendants.

Case No. CV-08-1271-KI

**RESPONSE IN OPPOSITION TO
DEFENDANTS’ MOTION FOR
EXTENSION OF TIME TO ANSWER**

Defendants Bureau of Land Management *et al.* (“BLM”) have moved the Court (Dkt # 15) to extend the time for them to file an answer to the complaint. Plaintiff Oregon Natural Desert Association (“ONDA”) opposes the motion. ONDA respectfully requests the Court to deny the motion and order BLM to file its answer without further delay. Because BLM has strung out the settlement negotiations, repeatedly opened issues ONDA believed were settled during

those discussions, and failed to timely confer on this motion, ONDA does not agree with defendants' characterization of there being a "viable prospect" of settlement in this action.

ONDA filed this case on October 27, 2008 (Dkt #1). In 2009, BLM filed (and the Court granted) three unopposed motions to extend the time to answer the complaint (Dkt ## 7–12). During that period of that time, the parties were engaged in fruitful settlement discussions. In October and December 2009, this Court twice by email flagged the fact that BLM had missed Court-ordered answer deadlines. In response to the Court's inquiries, the parties both times requested further extensions and the Court granted those extensions (Dkt ## 13, 14).

However, as counsel for ONDA explained by email dated December 22, 2009, in response to the Court's inquiry, ONDA has become increasingly frustrated by BLM's handling of the settlement discussion. As of late-October 2009, the parties had in hand what ONDA believed was a nearly final settlement document with all substantive provisions agreed upon by the parties. Since that time, BLM has come back to ONDA several times with further changes to the agreement. The parties continued to work to address BLM's proposed changes, but by the time the Court inquired in December as to the case's status, BLM had provided no settlement communications since November 20, 2009. ONDA explained to BLM in December that the plaintiffs would not agree to further extensions of time unless BLM could pledge to finalize the settlement expeditiously.

Finally, on January 6, 2010, BLM provided a response with further proposed changes to the document. Counsel for BLM asked if ONDA would oppose another 30-day extension to the answer deadline, in order to "wrap up" the settlement by February 8, 2010. ONDA responded to BLM's further revised settlement document on January 8, 2010 and agreed to the further extension of time based on an understanding that settlement was imminent. Per the Court's

request, the parties informed the Court by email that day that they appeared to be close to settlement and asked the Court to extend the answer deadline to February 8, 2010. The Court did so by order dated January 8, 2010 (Dkt # 14). Since then, BLM has not sent ONDA a revised settlement document, as defendants promised ONDA they would no later than the first week of February. This morning, ONDA discovered that late yesterday afternoon, the day BLM's answer was due, counsel for BLM sent an email to one of ONDA's two counsel of record requesting a further extension of time. BLM's counsel filed the motion for extension of time a couple hours later (Dkt # 15).

During these protracted settlement discussions, BLM has implemented the challenged juniper cutting project in a number of units on Steens Mountain. During 2009, ONDA did not object to the agency's planned cuts, based on an understanding that settlement was imminent.

However, based now on this pattern of BLM re-opening settlement issues previously agreed on, introducing significant delay into the settlement discussions, not timely conferring concerning further extensions to the agency's answer deadline, and continuing to implement the challenged project all the while, settlement no longer appears likely. ONDA therefore respectfully asks the Court to deny the motion for a further extension of the answer deadline and to order BLM to file its answer without further delay. ONDA would confer with defendants concerning a further case schedule following BLM's filing of its answer.

DATED this 9th day of February, 2010.

Respectfully Submitted,

s/ Peter M. Lacy

Peter M. Lacy (OSB # 01322)
Oregon Natural Desert Association

Of Attorneys for Plaintiff